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Creditors' Rights

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be contrary to law for it to give to a particular charity, because its activities bear no resemblance to the corporate business. Boards of directors are now assured that the type of charity is of no moment, so long as the recipient meets the general statutory standards. The children's hospital, the liberal arts college and the humane society are qualified to receive charitable contributions from corporations whose business enterprises may be restricted to the manufacture of rubber tires or cosmetics or nuts and bolts. Whether such corporations are to contribute to such charities is, within reasonable limitations as to amount, a matter of director discretion unfettered by the ultra vires doctrine.

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CREDITORS' RIGHTS

Labor Liens—Restaurant, Hotel, Tavern, Etc. Employees. Chapter 205 gives to persons performing labor in the operation of "any restaurant, hotel, tavern, or other place of business engaged in the selling of prepared foods or drinks, or any hotel service employee" a lien on the earnings of and the property used in the operation of, the "said business." It will require litigation to determine precisely what business institutions fall within the statutory coverage. The reference to restaurants and taverns is clear enough. The reference to "hotel—or any hotel service employee" is unclear. Does it mean that all hotel employees are beneficiaries of the statute, or only those engaged in "service" employment or employment concerned with the selling of food or drink?

The statutory language "or other place of business engaged in the selling of prepared foods or drinks" is a particularly fruitful source of controversy The statute does not read "engaged solely in the selling", it refers to hotels, whose food and drink dispensing business is but a part of the overall activity. What of other institutions a part of whose operations is the sale of food or drinks? The usual so-called "drug" store is an example. So is the department store or other mercantile establishment which operates a soda fountain, lunch counter or dining room. So is the establishment which operates a cafeteria for its employees. What of the business institution on whose premises a food or drink vending machine is situated?

That counsel who represents employees of employers like these will claim the benefits of the statute for their clients would seem fairly certain. Employees of establishments like grocery stores, markets and baked goods shops may be tempted too, since these sell food and possi-

bly "drinks" which are "prepared" in the usually accepted sense of being "ready to use." Counsel who would insist that the legislature meant "prepared on the premises" or "prepared on the premises on order" or "prepared on the premises on order for immediate consumption on the premises" faces the difficulties implicit in the simple fact that the legislature said "prepared."

There is further opportunity for dispute about the meaning of this chapter. The phrase, "on the earnings and on all the property of the employer used in the operation of said business" apparently contemplates the earnings and other assets of the general business establishment. If a department store which operates a dining room is deemed to come within the scope of the statutory coverage, are all of its employees beneficiaries? Are all earnings and assets, including those in no sense used in the dining room operations, drawn into the lien? A like question exists wherever the food and drink dispensing activity of the employer is not the employer's sole business.

It seems pretty obvious that the statute is ambiguous. Speculation on the construction likely to prevail seems profitless and will not be attempted here.

In subjecting the employer's earnings and business assets to the employee's lien, the new statute follows the scheme of RCW 60.32.010 [RRS §1149]. This earlier legislation also relates to employees engaged in the operation of the employer's business (as opposed to the various construction and improvement types of situation) and covers a wide range of activity—railways, canals, transportation companies, water companies, mines, manufacturing plants, sawmills, and lumber or timber companies. The period of unpaid employment, for which a lien right exists, is six months under RCW 60.32.010 [RRS §1149], and three months under the new statute.

Under Chapter 205 the employee is obliged to file his lien notice with the auditor of the county in which the labor was performed, and to serve or mail a copy on or to the employer, all within thirty days after cessation of the labor. The mechanics of the statute, as to these details, are not identical with those of some other lien statutes. The divergence in the several Washington statutes in these particulars suggests the need for a general over-haul of the statutory lien system, which has been growing steadily and haphazardly since 1863.

In providing that the lien created thereby is prior in right to an encumbrance which attached previously but which was not filed or

recorded "so as to create constructive notice thereof prior to that time, and of which the lien claimant had no notice," the new statute may have drifted into ambiguity again. It follows at this point the pattern set in RCW 60.04.050, 60.08.030 and 60.20.020 [RRS §§ 1132, 1156 and 1155] These also avoid the clear and precise language—"this lien shall be junior to an antecedent encumbrance duly filed." Two of these statutes have been construed, and have been held to give the lienor a position junior to an antecedent encumbrance duly filed. Chapter 205 will presumably receive the same construction.[1] Since the issue is one of fact and the new statute permits of argument, it may take litigation to achieve the construction.

By way of contrast, it may be recalled that RCW 60.12.030 [RRS § 1188-3] (which relates to farm laborers' liens) contains a differently worded priority clause. It reads: "The liens provided for in this chapter —shall be preferred to any other encumbrance upon the crops to which they attach." This language seems to mean that the lien is prior in right to an earlier and properly filed chattel mortgage on the crops. It has received that construction.[2] RCW 60.24.090 [RRS § 1165] (which provides for timber and lumber workers' liens) states flatly: "The liens provided for in this chapter are prior to any other liens . ," and has also been held, without discussion, to give the lienor an interest prior to that of an antecedent chattel mortgage.[3]

Substantially the same language in RCW 60.32.010 [RRS § 1149], "no mortgage, deed or trust, or conveyance shall defeat or take precedence over such lien," has received an exactly opposite construction. The lien holder whose claim arises under this chapter is subordinate to an earlier encumbrance duly filed or recorded.[4]

Why the priorities sections of the several statutes should be differently worded, why similar language in different chapters should be differently construed, and why any labor lien should be prior in right

[1] Concerning RCW 60.04.050 [RRS § 1132] Lipscomb v. Exchange National Bank, 80 Wash. 296, 141 Pac. 686 (1914), Jahn & Co. v. Mortgage Trust & Sav. Bank, 97 Wash. 504, 166 Pac. 1137 (1917), concerning RCW 60.08.030 [RRS § 1156] Rothweiler v. Winton Motor Car Co., 92 Wash. 215, 158 Pac. 737 (1916) (which, although directly concerned with the predecessor statute, says of the present version, that it "reaffirms the standing of a chattel mortgage").

[2] Sitton v. Lilienthal, 14 Wash. 624, 45 Pac. 303 (1896), Musgrave v. Atkinson, 118 Wash. 323, 203 Pac. 973 (1922).

[3] Greely v. Bank of Stevenson, 169 Wash. 181, 12 P.2d 493 (1932).

[4] Fitch v. Applegate, 24 Wash. 25, 64 Pac. 147 (1901), *In re* Cascade Fixture Co., 8 Wn.2d 263, 111 P.2d 991 (1941).

to an earlier encumbrance properly filed or recorded, are questions which cannot be answered on the basis of the existing decisions.

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CRIMINAL LAW

Subversion. The Subversive Activities Act of 1951[1] made criminal all subversive activities[2] knowingly engaged in. It also forbade public employment to a "subversive person," defined to include a member of any "subversive organization," and required every candidate for election to any office to file an affidavit that he is not a "subversive person" as defined. This latter provision was sustained as a valid condition of becoming a candidate for election to Congress in *Huntamer v. Coe*[3] on July 14, 1952. The supreme court, however, took pains to construe the affidavit requirement to refer to the present situation of the candidate, as distinguished from past conduct or membership, and there is at least a hint in the opinion that an affidavit negativing "knowing" membership in any subversive organization would be all that could constitutionally be required.[4] On December 15, 1952, in *Wieman v. Updegraff*,[5] the United States Supreme Court held that the due process clause of the Fourteenth Amendment forbids a state to exact an oath from its own employees negativing membership in any subversive organization regardless of the employee's knowledge of the nature of the organization. The discharge of an employee for "innocent" membership was branded as "patently arbitrary."[6] At the same time, the majority of the Court apparently sanctioned the use of test oaths limited to "guilty" membership.

The 1953 legislature acted accordingly by amending the definition of "subversive person" to exclude a person whose only dereliction is membership in a "subversive organization" unless such membership is attended with knowledge of the subversive nature of the organization,[8]

[1] RCW 9.81.

[2] Defined in the now familiar formula, essentially, the advocacy of the forcible overthrow or alteration of the government.

[3] 40 Wn. 2d 767, 246 P.2d 489 (1952).

[4] *Id.* at 775-6. The court was "confident" that the attorney general could devise a form of oath departing sufficiently from the terms of the statute to avoid unconstitutionality. *Id.* at 778.

[5] 344 U.S. 183 (1952).

[6] *Id.* at 192.

[7] *Id.* at 188-90.

[8] L. 1953, c. 142, § 1, amending RCW 9.81.010.